IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.805 OF 2001

Uttam Sukhadeo Dhandore,)
Age-35 Years, Resident of)
Shingroni, Tal. Malshiras.).. Appellant
(Org. Accused)

Versus

The State of Maharashtra.).. Respondent

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Shri Rahul S. Kate for the Appellant-Accused.

Smt. Usha Kejariwal, APP for the Respondent-State.

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CORAM : N.V.DABHOLKAR &
SMT.V.K.TAHILRAMANI, JJ

DATED : 28TH FEBRUARY, 2006

ORAL JUDGMENT : (PER N.V.DABHOLKAR, J)

1. This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973, by which the original accused challenges the judgment and order dated 10th August, 2001 delivered by the II Additional Sessions Judge, Pandharpur (District-Solapur), in Sessions Case No.50 of 2000. By the impugned judgment, the appellant-accused is held guilty for the offence of murder of Bhagwat Bandu Dhandore and is sentenced to suffer imprisonment for life, to pay a fine of Rs.500/-, in

default, rigorous imprisonment for three months.

2. The prosecution story, as it reveals from the complaint of Chaturabai Bhagwat Dhandore, can be narrated as follows:-

. The complainant Chaturabai, her husband Bhagwat, son Babasaheb and a child girl (grand-daughter of the complainant) were staying together in the precincts of village Shingorni in their agricultural land. Sukhadeo Dhandore is nephew of the complainant. He resides opposite the residence of the complainant in his own land. It is the claim of the complainant that her husband ought to have got a share of 10 acres in the 40 acres ancestral land, but the accused allowed him only 5 and 1/2 acres. Since about 15 years, the husband of the complainant was demanding 4 and 1/2 acres land, and upon demand, the accused had reacted by saying that he will teach him (complainant's husband) a lesson, some day.

. On the date of the incident, husband of the complainant viz. Bhagwat Bandu Dhandore, left home at about 11.00 a.m. He had gone to village Shingorni for collecting the ration card. He did not return till 5.30 p.m., and hence, the complainant and her

son Babasaheb started towards the village Shingorni. At a brook-let, at about 6.00 p.m. to the East of land of one Sambha Kale, Bhagwat was seen on the road. The accused caught the complainant by collar, caused him fall down, and by the time, the complainant could intervene, he picked up a stone and struck it on the head of the victim. The accused picked up another stone and struck it on the face of the victim. The victim Bhagwat suffered injuries to his forehead and face and died on the spot.

. According to the complainant, as she raised shouts, accused ran in the direction of village Shingorni. The people from the adjacent locality gathered, which included Jagannath Shinde, Sambha Kalel, etc. It is the claim of the complainant that she narrated the incident to those people. Since there was no vehicle available, she could not reach the police station to lodge a complaint immediately. The FIR is thus lodged with Malshiras Police Station at 08.45 hours of next day, i.e. 5th March, 2000. The complaint was registered by API Yeshwant Ombase (PW 9) and investigated by Shri Ombase and PI Chandrakant Jadhav (PW 10). The trial has ended in conviction, as narrated hereinabove.

3. The prosecution has examined in all eleven

witnesses. The complainant Chaturabai and her son Babasaheb (PWs 3 and 4) provide direct eye witness account of the alleged incident. Dr.Dhananjay Danve (PW 11) had performed post-mortem on the dead body of Bhagwat. Post-mortem notes at Exhibit-34 recorded an opinion that death was a result of acute shock due to head injury.

. Remaining six witnesses have turned hostile and rendered no assistance to the prosecution. PW 1 Balu Shinde and PW 2 Sambha Kalel were examined as the persons, who reached the location upon hearing the shouts of the complainant. Unfortunately, they denied any knowledge of the incident, or that they had seen the accused fleeing away from the location. PW 5 Baburao Godse and PW 6 Vilas Narale are the panch witnesses to the panchanama of spot of occurrence. Similarly, PW 7 Appa Rajwalli Attar and PW 8 Gajendra Ambadas Bhosale are the panch witnesses to the panchnama regarding seizure of bicycle of the accused. All the four panchas are totally hostile to the prosecution.

4. So far as the defence of the accused is concerned, on reference to statement under Section 313 of the Code of Criminal Procedure, 1973, he has admitted the relationship with the complainant

Chaturabai and location of the houses of the two families at a distance of 200 feet from each other. He denied existence of any land dispute between the families, by saying that there is no land standing in his name. According to him, on the alleged day, he was not at the village at all. According to him, his clothes and bicycle were not seized. It can, thus, be seen that the defence of the accused is that of total denial.

5. Heard Shri Rahul Kate, learned advocate for the appellant and Smt.Usha Kejariwal, the learned APP for the respondent-State. The two lawyers together have taken us through the evidence of complainant Chaturabai, her son Babasaheb and also the evidence of medical officer and two investigating officers. Both of them have also addressed their arguments, respectively, challenging and supporting the reasons recorded by the trial court.

. On reference to the judgment of the trial court, it can be seen that, for the reasons recorded in paragraphs 5 to 8, the learned trial Judge has discussed the medical evidence and arrived at a conclusion that the nature and location of the injuries rules out the possibility of suicide. Since the medical officer, during his cross-examination,

has admitted that the injuries of the like nature are possible in case a vehicle runs over the head of the victim, the learned trial Judge has also considered the possibility of such an accident. However, finding that the two blood stained stones were recovered near the victim and that there were no wheel marks near the head, the learned Judge has rightly ruled out the possibility of the case being that of an accident. Consequently, the learned Judge held that the death is established to be homicide.

. The trial Court found that the evidence of complainant Chaturabai and her son Babasaheb was consistent with each other and the same was corroborated by the medical evidence. The learned Judge also considered the challenge of the defence to the eye witness account as rendered by the complainant and her son Babasaheb. It is the case of the defence that the complainant Chaturabai has seen the husband in dead condition, and she could not have witnessed the incident, which resulted into death of her husband. According to the learned Judge, after considering the omissions brought on record during the cross-examination of Chaturabai, the complainant, he found that the complaint (Exhibit-13) does make a reference to the dispute regarding partition of the land, and the admission by the complainant to the

effect that the police report did not make a reference to the accused not giving share of the land, was erroneous. The learned trial Judge was of the view that absence of any reference to the use of a bicycle by the accused was not fatal to the creditworthyness of the depositions of the complainant and her son Babasaheb. The learned Judge was not inclined to discredit the two eye witnesses, merely because they are related to the victim. He has taken a note of the fact that there was an attempt on the part of the prosecution to examine independent witnesses in the form of PW 1 Balu Shinde and PW 2 Sambha Kalel who turned hostile. According to the learned Judge, the reactions of the complainant were normal and natural. She had reported the matter to the police patil and delay in lodging the complaint at the Police Station, Malshiras was properly explained by deposing about non-availability of the vehicle. According to the trial Court, although the clothes were not described to be having blood stains at the time of arrest of the accused, the report of the Laboratory shows that the clothes were having stains of human blood, and this was sufficient to establish complicity of the accused. 6. We are in agreement with the submission of Rahul Kate, learned advocate for the appellant, that the Judge has gone wrong on three

points, and we shall discuss the same hereinbelow.

. In paragraph 14 of the judgment, the trial Court has observed that PW 3 Chaturabai deposed that after the incident, she met the police patil of the village, but the police patil did not come to the scene of offence. We refer to the deposition of Chaturabai on this count. In her chief-examination, she deposed the events immediately after the incident as follows:-

> "Then the accused ran away by his bicycle towards village Shingorni. People gathered on hearing our shouts. Jagu Shinde, Balu Shinde, Aba Shinde, Sambha Kale and others were the people. I told the people that the accused dealt stone hits to my husband. My husband died. I was sitting near his dead body.
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> 3/- I could not got to the police station on that night as I was the woman and I had no vehicle to go to the police station. On second day i went to Malshiras Police Station."

. The complainant has nowhere narrated in her

chief-examination that she approached the police patil immediately after the incident. It is an admitted position that the residence of the complainant, the place of occurrence and the village Shingorni are within a distance of 5 minutes' walk from each other. Even on reference to the cross-examination, we can imagine the portion by which, probably, the learned Sessions Judge got himself misguided. In paragraph 6, the learned Judge has observed thus:-

> "I informed the police patil and Sarpanch about the threats given by the accused but no attention was paid by them."

. The above quoted portion is after some deposition in paragraph 6 earlier, which is her cross-examination regarding the land dispute and threats accorded by the accused when the deceased Bhagwat demanded his share in the land to the accused. The portion quoted above is in relation to the threats accorded by the accused on earlier occasion, and this was not reporting to the police patil immediately after the incident, as observed by the learned Judge.

. Without going into the merits, whether

vehicles are available from the village Shingorni to Malshiras, at about 6.00 p.m. or thereafter, we cannot ignore that, Chaturabai could have reported the matter to the local police patil and record shows that she has not so reported.

7. We are in agreement with the observation of the learned trial Judge that the complaint (Exhibit-13) contains reference to the dispute over agricultural land and denial of adequate share to the deceased Bhagwat by the accused. However, paragraph 5 of the evidence of the complainant contains in all five omissions and we are restricting our discussion only to one omission.

> "I stated in my report before police that the accused on bicycle came from behind us. I cannot tell reason as why accordingly there is no mention in my police report."

. On reference to complaint (Exhibit-13), it is evident that use of bicycle by accused is not at all narrated in the same. It is not narrated that the accused, while riding the bicycle, overtook the complainant and her son Babasaheb, and then grabbed the victim. The complaint narrates the incident in such a fashion that, while Chaturabai and her son

approached the location, a quarrel was already on between the victim and the accused, followed by accused catching the victim by the collar, causing him fall down and then striking couple of stone blows on the head of the deceased.

. The learned Judge in paragraph 12 has observed that the omission regarding bicycle is not such an omission which would mar the credibility of eye witness evidence. According to the learned Judge, the bicycle which was seized, lends support to the deposition of the complainant. We are at a divergent view with the trial Judge on this count. Reference of bicycle has changed the complexion of the prosecution story to the extent of its part, as to how the incident commenced. In the complaint, the accused is referred to have ran away. In the deposition, both, the mother and the son, claim that the accused came on the bicycle and fled away by using the bicycle. While saying that, the omission, as refered to the bicycle, was not significant, the trial Judge has, simultaneously, in paragraph 17, has given considerable importance to the fact that the accused fled away. If the fact that the accused escaped from the location is important, the manner in which he fled away is also important. If the complainant and her son are not sure whether the

accused ran away on the feet or whether he had approached and ran away by using the bicycle, they are not sure about an important part of the prosecution story and their claim of being eye witnesses can be looked with doubts.

. Really speaking, the deposition before the Court is substantive evidence and not the contents in the FIR (Exhibit-13). The contents in the FIR can be used for, either corroboration or contradiction. As per the deposition, the accused was riding a bicycle. He came in the same direction, in which the complainant and her son were walking, and overtook them before assaulting the victim. The time of the incident is about 6.00 p.m. in the month of March, and certainly these are not dark hours. The moot question, that we can ask to ourselves is, whether having overtaken the wife and son of the victim, the accused, who was alone, would dare to assault the victim in presence of his widow and son ? The story narrated in the deposition, therefore, fails on the touchstone of probability.

8. The learned Judge felt that absence of description of blood stains in the panchanama of arrest was not significant because the report of Analyser showed that the shirt and pyjama of the

accused were having blood stains, which appear to have been washed. Unfortunately, on reference to Exhibit-31, the report of the Analyser has failed to determine blood group of blood stains on all the articles, and therefore, the report of the Analyser cannot clinchingly establish complicity of the accused.

9. For the reasons discussed hereinabove, we are of the considered view that the claim of the complainant Chaturabai and her son Babasaheb, being eye witnesses, is doubtful for two reasons, firstly, that their inconsistent narration about the manner in which the accused arrived and departed, and secondly, because of passive reaction in not reporting the matter to the police patil on the same day, a possibility peeps out that the complainant learnt about killing of her husband belatedly and she was not an eye witness. Viewed thus, the accused is entitled to benefit of doubt, and the impugned judgment and order is, therefore, required to be set aside.

10. The appeal is allowed. The judgment and order dated 10th August, 2001 delivered by the II Additional Sessions Judge, Pandharpur, in Sessions Case No.50 of 2000 holding the appellant guilty of

offence punishable under Section 302 of I.P.C. is quashed and set aside. The appellant is acquitted of the charge. He shall be set to liberty, forthwith; if not required in any other cases.

. The Registrar (Judicial) shall ensure early despatch of appropriate writ to the prison authorities.

(V.K.TAHILRAMANI,J) (N.V.DABHOLKAR,J)